

REMARKS

Reconsideration of the pending application is respectfully requested on the basis of the following particulars:

1. Amendments and Support for Same

By the Response, claims 1 and 2 have been amended to more particularly point out and distinctly claim the subject matter of the invention. Support for the amended features can be found in, e.g., Figs. 1 and 4 and paragraph [0007] of the specification. No new matter has been added. Accordingly, claims 1-2 are respectfully submitted for consideration. Approval and entry of the amendments are respectfully requested.

2. Objection to the Specification

With respect to the objection to the abstract of the disclosure, Applicant has amended the abstract as shown above. In view of the amendments to the abstract, Applicant respectfully requests reconsideration and withdrawal of the objection to the specification.

3. Rejections under 35 U.S.C. §103(a)

With respect to the rejection of claims 1-2 under 35 U.S.C. §103(a) as being unpatentable over Kim (US 6,611,605) in view of Ito (US 6,996,246), Applicant respectfully traverses the rejection at least for the reason that Kim and Ito, combined or separately, fail to teach, disclose, or suggest all of the limitation recited in the rejected claims.

As amended, claim 1 recites an outer periphery of a diaphragm is fixed to an open end of a housing to cover the housing, wherein a portion close to the outer periphery of the diaphragm is bent along an inner periphery of the housing to form a rising portion extending toward the open end, an extending surface extending outward along a flat surface formed at the open end of the

housing from the rising portion is formed by bending, and only the flat surface of the housing and the extending surface of the diaphragm are arranged and bonded so as to be parallel while facing each other.

According to an embodiment of claim 1, the lowest resonance frequency (f_0 : f zero) is possible. Further, the formation of an extending portion extending outward along a flat surface formed at an open end of the housing from the rising portion increases a radius of a whole vibration plate to improve acoustic characteristics. Still further, by making only the flat surface of the housing face parallel to the extending portion of the diaphragm, a gasket, such as a sponge, can be bonded to prevent sound leakage.

In contrast with Applicant's claimed invention, Ito describes in col. 4, lines 29-38 the following:

"...However, in the present invention, a rising portion 18c of the diaphragm 15 is adheres to an inside surface 14a-1 of a frame projecting portion 14a with an adhesive. That is, the surfaces both perpendicular to the radial direction are adhered to each other."

Accordingly, Ito does not teach, disclose, or suggest only the flat surface of the housing and the extending surface of the diaphragm are arranged and bonded so as to be parallel while facing each other, as recited in amended claim 1 of the present invention.

As Ito fails to disclose at least the above-mentioned claimed feature, Ito does not cure the deficiencies of Kim as alleged by the Examiner.

The requirements for establishing a *prima facie* case of obviousness, as detailed in MPEP § 2143 - 2143.03 (pages 2100-122 - 2100-136), are: first, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference to combine the teachings; second, there must be a reasonable expectation of success; and, finally, the prior art reference (or references when combined) must teach or suggest all of the claim limitations.

Further, according to MPEP §2141(I), Patent examiners carry the responsibility of making sure that the standard of patentability enunciated by the Supreme Court and by the Congress is applied in each and every case. The Supreme Court in *Graham v. John Deere*, 383 U.S. 1, 148 USPQ 459 (1966), stated:

Under § 103, the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved. Against this background, the obviousness or nonobviousness of the subject matter is determined. Such secondary considerations as commercial success, long felt but unsolved needs, failure of others, etc., might be utilized to give light to the circumstances surrounding the origin of the subject matter sought to be patented.

Moreover, according to MPEP §2141(II), when applying 35 U.S.C. §103, the following tenets of patent law must be adhered to:

- (A) The claimed invention must be considered as a whole;
- (B) The references must be considered as a whole and must suggest the desirability and thus the obviousness of making the combination;
- (C) The references must be viewed without the benefit of impermissible hindsight vision afforded by the claimed invention; and
- (D) Reasonable expectation of success is the standard with which obviousness is determined.

As Kim and Ito, combined or separately, fail to teach, disclose, or suggest only the flat surface of the housing and the extending surface of the diaphragm are arranged and bonded so as to be parallel while facing each other, the reliance on Kim and Ito in the obviousness rejection is improper.

In view of the amendment and arguments set forth above, Applicant respectfully requests the Examiner to follow tenets A-A in making the obviousness rejection. Further, Applicant respectfully requests reconsideration and withdrawal of the §103(a) rejection of claims 1-2.

4. Conclusion

In view of the amendments to the claims, and in further view of the foregoing remarks, it is respectfully submitted that the application is in condition for allowance. Accordingly, it is requested that claims 1-2 be allowed and the application be passed to issue.

If any issues remain that may be resolved by a telephone or facsimile communication with the Applicant's representative, the Examiner is invited to contact the undersigned at the numbers shown.

Further, while no fees are believed to be due, the Commissioner is hereby authorized to charge any additional fees which may be required, or credit any overpayment to Deposit Account No. 50-4525.

Respectfully submitted,

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